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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,743	05/26/2000	Liliana George	2870/289	9794

26646 7590 10/23/2002

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EXAMINER
LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
1712	14

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/580,743	Applicant(s) GEORGE ET AL.
	Examiner LOVERING	Group Art Unit 1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on AUG. 19, 2002.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1, 7-9, 17-30, 34-37, 39-42 AND 44 is/are pending in the application.

Of the above claim(s)_____ is/are withdrawn from consideration.

☒ Claim(s) 7, 8, 17-30, 34, 36, 37, 40-42 AND 44 is/are allowed.

☒ Claim(s) 1 AND 9 is/are rejected.

☒ Claim(s) 35 AND 39 is/are objected to.

☐ Claim(s)_____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on_____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on_____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number)_____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received:_____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 13

☐ Interview Summary, PTO-413

☐ Notice of References Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other_____

Office Action Summary

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by Franco et al. 5,994,414 of record, especially Abstract; column 1, line 66 - column 4, line 21, particularly column 2, lines 29-52.

3. Applicants' arguments filed August 19, 2002 have been fully considered but they are not deemed to be persuasive. While Franco et al. may not use the term "pseudoemulsifier", it is well-settled that a reference need not disclose a specific limitation in haec verba. See In re Bode et al. 193 USPQ 12, 13; and Ex parte Novitski, 26 USPQ 2d 1389. It is evident from the instant specification, page 5, lines 2-7 that glyceryl stearate is a pseudoemulsifier of this case, applicants' assertion to the contrary notwithstanding.

4. The indicated allowability of claim 9 is withdrawn in view of the newly discovered reference(s) to Yoneda et al. WO 99/62482. Rejections based on the newly cited reference(s) follow.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed

publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1 and 9 are rejected under 35 U.S.C. § 102(a) as being clearly anticipated by Yoneda et al. WO 99/62482, esp. Example 4.

7. Claims 35 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the water-thin emulsions of claims 7, 8, 17-30 or the multiple emulsions of claims 34-37, 39-42 and 44 herein.

9. The remaining references listed on the attached Form PTO-1449 (IDS filed August 19, 2002) have been considered and made of record.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc
October 22, 2002

Richard D. Lovering
RICHARD D. LOVERING
PRIMARY EXAMINER
GROUP ~~1200~~ 1700